

Wasantha Samarasinghe v Department of Inland Revenue

RTIC Appeal (In-Person Hearing)/747/2018- Order adopted subsequent to the hearing/consideration as part of the formal meeting of the Commission on 20.02.2019

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr.MahindaGammampila
Commission Member: Ms.Kishali Pinto-Jayawardena
Commission Member: Mr. S. G. Punchihewa
Commission Member: Dr. Selvythiruchandran
Commission Member: Justice Rohini Walgama

Appellant: Wasantha Samarasinghe
Notice issued to: D. M. L. Ivan Dissanayake, Commissioner-General, Department of Inland Revenue

Appearance/ Represented by:
Appellant – Wasantha Samarasinghe
PA- M. D. S. M. Devapriya, Senior Commissioner, SanathKarannagoda PMA, Y. S. R. P. A. Kehelkatuwa PMA

RTI Request filed on	17.08.2018
IO responded on	17.08.2018(acknowledgement) 04.09.2018 (Response)
First Appeal to DO filed on	07.09.2018
DO responded on	17.09.2018
Appeal to RTIC filed on	01.10.2018

Brief Factual Background:

The Appellant by request dated 17.08.2018 requested the following information;

Ceylon Steel Corporation Ltd. (Ceylon Steel)
Ceylon Steel Corporation Ltd. (□□)
GTB Ceylon Steel Corporation (Pvt.) Ltd. (GTB)
Melva Rolling(Pvt.) Ltd. (Melva)
CaptainSteel (Pvt.) Ltd. (Captain)
(CN) ConfabSteel (Pvt.) Ltd. (CN)
(SR) Steel (Pvt.) Ltd. (SR)
Melbourne Metal(Pvt.) Ltd. (Melbourne)
Melbourne Metal (Pvt.) Ltd. (Shakthi)
Ashok Steel Industries(Pvt.) Ltd. (Ashok)

Ashok Steel Industries (Pvt.) Ltd. (Sunstar)
Kaylas (RS)
IWW Industries (Pvt.) Ltd. (IWW)
Bolka Industries(Pvt.) Ltd. (□□□□□□)
Mocow Lanka Steel(Pvt.) Ltd. (DSI)
Moscow Lanka Steel(Pvt.) Ltd. (3 STAR)
Jetmore Steel(Pvt.) Ltd. (JET)

Information in relation to the amount of income tax, VAT, and Nation Building Tax paid by the above iron/ steel producing companies registered in Sri Lanka in the last 5 years, to be provided separately

The IO responded on 04.09.2018 stating that the information cannot be provided in terms of Section 5 (1) (a) and 5 (1) (c) (iii) of the RTI Act. Dissatisfied with the response the Appellant lodged an appeal on 07.09.2018. The DO responded on 17.09.2018. The Appellant was dissatisfied with this response and lodged an appeal with the Commission on 01.10.2018.

Matters Arising During the Course of the Hearing:

When inquired about the answers given to the information request by the Public Authority (PA), the PA responded stating that the information officer had responded to the request by a letter dated 04.09.2018. A letter dated 07.09.2018 has been sent to the Information Officer of the Department of Inland Revenue informing him that the PA had not acted on the information requested and urged to act promptly. It was also emphasized by the Appellant that the letter dated 07.09.2018 was addressed to the Information Officer and when inquired by the PA as to whether it will raise any objection in this regard, the PA responded by stating that it tries to provide information as far as possible and thus has no objections in relation to the same. The PA further submitted that the PA responded to the Appellant by letter dated 17.09.2018.

In response, the Appellant stated that he had not received the response letters dated 04.09.2018 and 17.09.2018. The letters were handed over to the Appellant at the Appeal hearing.

The PA Referring to the direction of the RTIC in RTI Appeal 229/2017 M. Hemapala v Department of Inland Revenue, where the Appellant requested information on Madolsima Plantation Ltd's tax return, the PA noted that the RTIC had taken into account that the information requested pertained to personal information in terms of Section 5 (1) of the Right to Information Act, subject only to release if an overriding public interest was established. The Appellant responded in counter, stating that he had the right to know this information as a taxpayer and notwithstanding the provisions of Subsection 5 (1), under and in terms Section 5 (4) the information in question should not be refused as the public interest in disclosing the information outweighs the harm that would result from its disclosure.

The PA further submitted that a summary on tax payments information is included in the PA's Annual report but the tax payments paid by the above-mentioned companies in the information request are not included in the same report. The PA also stated that the tax payments of each company mentioned above is not included in PA's Annual report but that the said report contains a summary version of all tax payments paid in each year.

Order:

On consideration of the submissions made by both parties, it is of note that there is a significant difference between the information requested in the Appeal No. 229/2017 and this information

request. That is, in RTIC 229/2017, the Appellant had requested letters that were exchanged between Madolsima Plantation Ltd and the Inland Revenue Department which attracted The privacy interests of individuals named in those letters.

However in this Appeal the Appellant had requested the amount of tax paid by the above-mentioned companies. Such information should be in the public records of the PA. This Commission may direct the disclosure of such information to the public if there is any public interest in it, even though the person (third party) has not consented in writing to the disclosure of such information under Section 5 (1) (a) of the Right to Information Act. In RTIC Appeal No: 99/2017 The Air Pilots Guild of Sri Lanka v Sri Lanka Airlines Ltd

this Commission ordered the information requested to be disclosed on the ground that it is in the public interest even where the relevant third party has not consented to release of the same

The function of the Commission is to ascertain whether the information requested can be legitimately and in law, be made available to the Appellant, subsequent to a consideration of whether the information does not fall within the purview of the several exemptions detailed in Section 5 (1) of the RTI Act and further, and in the event that the information does fall within the purview of an exemption is Section 5 (1), based on whether the public override in Section 5 (4) is found to apply.

Given the above circumstances, the attention of the PA was drawn to the fact that the information sought, namely, the information in relation to income tax, VAT and NBT paid by registered steel manufacturing companies in Sri Lanka for the last five years separately, the consent from such companies in or against disclosure under Section 29 (1) is not applicable because these information could not be classified as confidential information given by a 3rd party under and in terms of section 5 (1) (i) of the Right to Information Act (RTI Act).

It is also noted that Section 5(1)(c)(iii) of the RTI Act is not applicable as it relates to 'premature' disclosure of financial and economic policies relating to taxation.

The matter is re-fixed for hearing on 23.04.2019 to determine further action to be taken, as the Public Authority is seeking further date to discuss this information request with the Director General of the Public Authority.

RTIC Appeal (In-Person Hearing)/747/2018- Order adopted subsequent to the hearing/ consideration as part of the formal meeting of the Commission on 15.10.2019

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr.MahindaGammampila
Commission Member: Ms.Kishali Pinto-Jayawardena
Commission Member: Justice Rohini Walgama

Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: Wasantha Samarasinghe
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Appearance/ Represented by:

Appellant – Wasantha Samarasinghe
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Matters Arising During the Course of the Hearing:

Due to the security situation prevailing in the country the hearing scheduled for 23.04.2019 was re-fixed for 15.10.2019.

On 20.02.2019, as the PA had requested for time in order to apprise the Commissioner-General (DO) of the facts transpiring before the Commission and to obtain appropriate/ necessary instructions, the Commission queried whether the PA was now amenable to the release of the information.

The PA stated that it had awaited a written communication by the Commission in relation to the same in order to submit to the Commissioner-General. Although the relevant minute/ order had not been communicated to the PA, the PA clarified that it had placed the matter before the Commissioner-General informing him of the status of the Appeal and the events transpiring before the Commission. The PA produced a copy of the unsigned letter addressed to the Commissioner-General as evidence of the same.

Excerpts of the relevant content are reproduced below;

... it is felt that clarifications on the legality and provisions of the Department as well as the rights of tax payers need to be obtained.

Further it is felt that the DO in terms of the RTI Act is the Commissioner-General of Inland Revenue and in a situation where there is no appeal to the DO from a decision of the IO a conclusion/ decision of this nature being provided by the RTI Commission is contrary to the laws and procedures.

It is felt that as this gives rise to a legal issue it is appropriate to forward this to the Attorney-General's Department for advice

As the DO under the Act this is forwarded to you for information and a decision on this matter .

The PA, at the previous hearing, submitted that it is not taking up the objection that the Appellant not had directed his letter complaining of non-response to the DO but rather to the IO.

The Appellant contended that the PA is intentionally delaying the provision of the information and that this letter provided before the Commission is unsigned and of no validity and therefore is not evidence of the fact that the PA has taken any steps subsequent to the previous hearing to apprise the Commissioner-General of the matter.

Order:

On the previous hearing in this Appeal, it was the view of this Commission that the requested information (i.e. the payment of tax by an entity liable to pay tax) relates to information that pertains to the collection of public funds/tax monies. It has not been contended by the Public Authority that the payment thereto has been disputed or is the subject of any controversy. As such, it was our thinking that this information may legitimately come within the scope of information released under the Act, subject to an overriding exception put forward by the Public Authority in terms of Section 5(1) of the RTI Act.

No such exception has yet been established by the Public Authority. Disclosure of the amount of tax paid by an entity to the state coffers cannot amount to 'serious prejudice' being caused to the economy of Sri Lanka by 'prematurely' disclosing economic or financial policies regarding taxation (Section 5(1)(c) (iii)). Nor does this amount to an instance where information has been supplied in confidence to a third party (Section 5(1) (i)) as what is requested here are not the private and confidential documents submitted to the Public Authority by the entity in issue.

Further it is noted that, as the information relates to taxation (i.e. the amount contributed by the said entity to the state coffers), the above reasoning in this appeal and relevant to the circumstances of the matter in question is limited to the immediate factual context of this appeal and may not be taken as a general precedent in relation to information pertaining to details of taxation.

In the circumstances, we issue this Order to enable the relevant officials of the PA to apprise the Commissioner-General and to place its response before the Commission in this regard on or before the next date of hearing which will be the final date in this Appeal.

The Appeal is adjourned.

Next Date of Hearing: 14.01.2020

RTIC Appeal (In-Person Hearing)/747/2018- Order adopted subsequent to the hearing/ consideration as part of the formal meeting of the Commission on 14.01.2020

Order under Section 32 (1) of the Right to Information Act, No. 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)

Chairperson: Mr. Mahinda Gammampila
Commission Member: Ms. Kishali Pinto-Jayawardena
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Director-General: Mr. D. G. M. V. Hapuarachchi

Appellant: Wasantha Samarasinghe
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Appearance/ Represented by:
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Matters Arising During the Course of the Hearing:

The PA was queried as to the response of the Commissioner-General once apprised of the proceedings and order of the Commission. The PA submitted that unless there is a public interest it was of the view that private information exempted by Section 5 (1) (a) could not be provided. The PA contended that a company would fall within this exemption given that a company is a legal entity.

The Commission is of the view that a company does not fall within the purview of Section 5 (1) (a) of the RTI Act and it was limited to individual persons. Nevertheless the fact that the information request concerns monies due to a public fund establishes that there is a public interest in the disclosure of the information.

The PA further submitted that in a previous appeal i.e. M G Hemapala v Department of Inland Revenue (RTIC Appeal 229/2017) the Commission permitted that the relevant company be queried as to its consent to the disclosure of information and upon the grant of the same that the information be released.

The Commission was of the view that this was limited to the facts of the said case, where the information request concerned correspondence between the Company and the PA and not the amount of tax paid by the Company, and is therefore distinguished from the present case.

The PA was of the view that advice had to be obtained from the Attorney-General's Department in relation to the release of the same on its own accord without a direction from the Commission. The PA further submitted that in terms of Section 209 of the Inland Revenue Act No 10 of 2006, which is a secrecy provision it is prevented from disclosing the information except to the CIABOC, upon a court order, to the Ministry of Finance or in any other manner laid down in the said Section. The Commission noted that the said Inland Revenue Act No 10 of 2006 had been replaced by 24 of 2017 and accordingly queried from the PA the status in terms of the new Act. The PA submitted that it was relying on the old Act as the information requested concerns a period during which the Act No 10 of 2006 was in operation. Upon being queried as to the status under the new Act the PA submitted that the circumstances in which the information maybe released are even more stringent. The PA submitted that the disclosure of the details requested will enable anyone to calculate other figures in relation to the said companies which the companies will perceive as being prejudicial to their functioning.

The Commission noted that the new Act could be applicable from the perspective of the Right to Information and as such submissions in terms of the said Act too would be necessary.

The Appellant submitted that there was a grave need for this information to be disclosed as this will reveal that the companies in relation to whom the information is being sought have engaged in tax evasion amounting to over LKR 25 billion. Furthermore it is in the interest of the public that the said information is disclosed.

Order:

The PA is directed to file written submissions inter alia substantiating its position vis a vis the Official Secrecy clauses contained in the Inland Revenue Act No 24 of 2017. The Appellant may respond within two weeks of the receipt of the PA's written submissions.

Next Date of Hearing:03.03.2020

Order is hereby conveyed to both parties in terms of Rule 27 (3) of the Commission's Rules on Fees and Appeal Procedures (Gazette No. 2004/66, 03.02.2017).
